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Supreme Court, U.S.
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JOSEPH F. SPANIOL, JR.
CLERK

87-975

NR. _____

IN THE
UNITED STATES SUPREME COURT
OCTOBER TERM, 1987

GENE SCROGGY, et al., PETITIONER

verses

DANIEL C. SUMMERS, RESPONDENT

PETITION FOR A WRIT OF CERTIORARI
TO THE U.S. COURT OF APPEALS
FOR THE SIXTH CIRCUIT

LIGHT ORANGE

RESPONDENT'S BRIEF IN OPPOSITION
TO PETITION FOR WRIT OF CERTIORARI

Respectfully submitted,
Daniel Summers 61352
DANIEL C. SUMMERS 61352
Kentucky State Penitentiary
Post Office Box 128
Eddyville, Kentucky 42038

RESPONDENT, PRO SE

CERTIFICATE OF SERVICE:
I hereby certify that a true and correct copy of the Brief in Opposition has been mailed, first class, postage pre-paid, to the Honorable Barbara W. Jones, Corrections Cabinet, State Office Building, Frankfort, Kentucky 40601, (Counsel for Petitioner) on this 19th day of November 1987, pursuant to Rule 28.5(c), and all parties have been served.

Daniel Summers
DANIEL C. SUMMERS,
Respondent, Pro Se

SWORN AND SUBSCRIBED BEFORE ME AND IN MY PRESENCE, THIS 19th DAY OF NOVEMBER 1987, by DANIEL C. SUMMERS:

_____
NOTARY PUBLIC

My Commission Expires: My Commission Expires Jan. 14, 1991

11pp

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NR._____

IN THE
UNITED STATES SUPREME COURT
OCTOBER TERM, 1987

GENE SCROGGY, et al., PETITIONER

versus

DANIEL C. SUMMERS, RESPONDENT

MOTION TO PROCEED IN
IN FORMA PAUPERIS

Comes now DANIEL C. SUMMERS, Respondent Pro Se, and respectfully moves this Court to allow him to proceed in this action in in forma pauperis, pursuant to Rule 46, in that I does not have the funds to pay for filing his Brief in Opposition, paying for photo-copys of my Brief in Opposition and other papers or pleadings, etc.

I state that I was permitted to proceed in in forma pauperis at both the U.S. District Court for the Western District of Kentucky, and on appeal in the Sixth Circuit Court of Appeals and upon which decisions the Petitioner now seeks Certiorari in this Court. I respectfully submit my Affidavit of Indengency in support of this Motion.

WHEREFORE, I respectfully requests this Court to permit me to proceed in this action in in forma pauperis, pursuant to Rule 46.1 to Rule 46.7, inclusive.

Respectfully submitted,
Daniel Summers 81366
DANIEL C. SUMMERS #81 366
Kentucky State Penitentiary
Post Office Box 128
Eddyville, Kentucky 42038

Respondent, Pro se

IN THE UNITED STATES SUPREME COURT

AFFIDAVIT OF INDIGENCY

I, DANIEL C. SUMMERS, state and declare, under penalty of perjury, the following:

1. That my name is Daniel C. Summers, and that I am incarcerated in the Kentucky State Penitentiary located in Eddyville, Kentucky, and whose authorized address is: Post Office Box 128, Eddyville, Kentucky 42038-0128.

2. That I filed a Petition for Habeas Corpus in the Lyon County Court, Eddyville, Kentucky and was granted in forma pauperis status. That this Petition was to exhaust State Remedies in the action now pending in this Court.

3. That I was also granted in forma pauperis status in both the Kentucky Court of Appeals and Kentucky Supreme Court in this action.

4. That I filed a Petition for the Writ of Habeas Corpus in the U.S. District Court for the Western District of Kentucky and was granted in forma pauperis status and that that Court dismissed the Petition and I appealed to the Sixth Circuit Court of Appeals, was granted in forma pauperis, and that Court reversed the District Court's dismissal.

5. That my financial status has not changed since the commencement of this action in 1985, which has now led to this Court and that I still can not pay for the prosecution of this action against the Petitioner.

FURTHER AFFIANT SAYETH NOT.

Daniel Summers 61366
DANIEL C. SUMMERS,
Respondent, pro se

Subscribed to before me and in my presence, by Daniel C. Summers, this 18 day of November 1987.

Laurel Newsome
NOTARY PUBLIC

My Commission Expires: My Commission Expires Mar. 4, 1991.

CERTIFICATE

I certify that the applicant herein has the sum of $8.00 on account to his credit at the Kentucky State Penitentiary institution where he is confined. I further certify that the applicant likewise has the following securities to his credit according to the records of said institution: 11-18-87.

11-16-87
(DATE)

Marie Newman
(Authorized Officer of Institution)

QUESTIONS PRESENTED FOR REVIEW

I.

THE COURT SHOULD DENY THE WRIT UNDER THE DOCTRINE OF THE LAW OF THE CIRCUIT.

II.

THE DECISION BELOW DECLARING KENTUCKY LAW UNCONSTITUTIONAL THAT PRESCRIBED MANDATORY REVOCATION OF PAROLE UPON A PAROLEE'S CONVICTION OF A NEW FELONY CRIME DOES NOT RAISE IMPORTANT OR UNRESOLVED PROBLEMS.

TABLE OF AUTHORITIES

CASE LAW

Moss v. Patterson, [illegible] F.2d 137 (6th Cir.)(Per Curiam) Cert. denied sub nom., Kette v. Moss, 434 U.S. 873 (1977).....2,3,

Kette v. Moss, 434 U.S. 873 (1977) (Cert. denied sub nom.,.....2

Morrissey v. Brewer, 408 U.S. 471 (1972).....2,3

Pickens v. Butler, 814 F.2d 237 (5th Cir. 1987).....2,3

Black v. Romano, 471 U.S. 606 (1985).....2,3

Kendrick V. Bland, 541 F.Supp. 21 (1980)(Consent Decree).4

STATUTE LAW

Kentucky Revised Statute 439.352 1,2

NR._____

IN THE
UNITED STATES SUPREME COURT
OCTOBER TERM, 1977

GENE SCROGGY, et al., PETITIONER

versus

DANIEL C. SUMMERS, RESPONDENT

RESPONDENT'S BRIEF IN OPPOSITION
TO PETITION FOR WRIT OF CERTIORARI

OPINION BELOW

I accept Petitioner's citation to the opinion below except that the date of Judgment by the Sixth Circuit Court of Appeals was dated JULY 31, 1977, NOT August 31, 1977, which is the date of the Court of Appeals Mandate.(See Petitioner's Appendix, pages A-1 and A-3).

JURISDICTION

I accept Petitioner's statement of Jurisdiction, except as to the date of Judgment as stated above.

STATUTES INVOLVED

The applicable Kentucky Statute involved is reproduced in Petition for Certiorari on page 2.

COUNTERSTATEMENT OF THE CASE

I accept the Petitioner's Statement of the Case.

REASONS FOR DENYING CERTIORARI

THE COURT SHOULD DENY THE WRIT UNDER THE DOCTRINE OF THE LAW OF THE CIRCUIT.

The Sixth Circuit Court of Appeals struct down as unconstitutional a similar Ohio Statute in 1977, and this Court

denied Certiorari. Moss v. Patterson, 550 F.2d 137, 139 (6th Cir.) (per curiam), cert. denied sub nom., Kette v. Moss, 434 U.S. 373 (1977). The Commonwealth of Kentucky failed to file an amicus curie brief, although they had a strong reason to support the views of the Ohio Petitioners against the unconstitutional holding by the Sixth Circuit.

Since this Court denied Certiorari (Kette, supra) the Sixth Circuit Court of Appeals decision in Moss became the law of the Circuit, and ANY State within its Jurisdiction which had the same Statute calling for the automatic revocation of parole, without a revocation hearing, should have recinded their own respective Statute. Instead, Kentucky made no alterations in their own Statute. See K.R.S. 439.352, eff. June 14, 1962.

If Kentucky, like Ohio had recinded its automatic revocation Statute, then it is clear that I would have been afforded a hearing in which I could argue that I was NOT on parole, so therefore could not be revoked in 1983. This, I believe, was just one reason for this Court's decision in Morrissey v. Brewer, 408 U.S. 471, 487-488 (1972), to protect those individuals from arbitrary state revocations of parole, and especially envisioned cases identical to mine in which I have tried to argue that I was NOT on Parole so therefore could not be revoked.

The Petitioner cites Pickens v. Butler, 814 F.2d 237 (5th Cir. 1987) and Black v. Romano, 471 U.S. 606, 105 S.Ct. 2254, (1985) as reasons why the Sixth Circuit was wrong in its Moss opinion. What the Petitioner so conviently leaves out is the plain fact that both Pickens and Black at least had a pre-hearing in which an independant fact finder determined that they were on parole (or probation) and had committed crimes under this disability. They may not have had a final revocation hearing, but they did indeed have a "probable cause" hearing. I did not.

WHEREFORE, since both Pickens, supra, and Black, supra used in support of Petitioner's request for Certiorari were provided with a "probable cause" hearing in which both were found to be under parole supervision when subsequently convicted of new crimes (i.e. violation of parole conditions) then these cases are NOT IN CONFLICT WITH EITHER MORRISSEY, SUPRA, OR MOSS, SUPRA., I respectfully move this Court to Deny Mr. Scroggy's Petition.

II.

THE DECISION BELOW DECLARING KENTUCKY LAW UNCONSTITUTIONAL THAT PRESCRIBED MANDATORY REVOCATION OF PAROLE UPON A PAROLEE'S CONVICTION OF A NEW FELONY CRIME DOES NOT RAISE IMPORTANT OR UNRESOLVED PROBLEMS.

Requireing a State to conduct informal pre-revocation hearings when a person ON PAROLE commits a new felony crime, is subsequently convicted of that new crime would not create any major problems to that State, but would instead meet the terms of Morrissey, supra., by providing due process to the individual prior to his revocation.

As stated in Argument I above, both Pickens and Black, supra, were given an informal hearing. At that hearing, the one thing which the fact-finder MUST determine, is whether the individual is even on parole or under parole board authority, at the time of this "new" crime. If it is found that the individual is under parole authority, then the only Harm committed by this procedure is the few minutes required for this hearing. On the other hand, if it is found that the individual is NOT under the parole authority, then the prejudice is patently and clearly obvious if the parole authorities (fact finder) "revoke his parole" anyway. This is exactly what takes place in an automatic revocation Statute such as Kentucky's, in which there is no informal hearing prescribed or even considered.

In the instant case, I have steadfastly maintained that I was NOT ON PAROLE at the time of the "bad check" crimes. If I could have had even an informal pre-revocation hearing, I would have been able to prove this fact, and I would have also proved that the Commonwealth of Kentucky was in Contempt of the District Court's Order as enumerated in the 1980 Consent Decree to Kendrick v. Bland, 541 F.Supp. 21(W.D.Ky. 1980) which states that the Corrections Cabinet's sub-department agreed to notify EVERY-ONE on parole of their obligations to affirmatively seek their final discharge/restoration of civil rights. During the hearings which ultimately resulted in the Consent Decree being signed, testimony was heard concerning the Kentucky Parole Board's continued disregard of their own Administrative Regulations when it came to parole revocation/petitions for final discharges. The hearings disclosed that the Parole Board consistently had failed to advise its parolees of their obligations; either by their own parole officers or by their neglect in notifying the parolee of their continued obligations after coming off of parole supervision.

The parole guidelines of 1963 to 1980 are not before this Court on this Petition for Certiorari, but if they were, this Court would have to agree that I was not in fact on parole at the time when the bad checks were written and subsequently resulted in my present ten (10) year sentence.

That a parolee has a substantial liberty interest once he is in fact paroled is undisputed. But when an individual is through with his parole requirements the Petitioner evidently is trying to persuade this Court that they can willy-nilly put the ex-parolee right back into prison regardless of the circumstances - whether smitting on the grass or committing a heinous crime.

C O N C L U S I O N

This Court should Deny Certiorari. Both cases relyed on by the Petitioner are not controlling in either the factual situation or point of law in this instant case. I was never given any hearing before having my so-called parole revoked (informal or formal). Someone working in the Parole Commission decided that I was on parole and submitted the necessary papers to the Kentucky State Penitentiary which therefore told me I had had my parole revoked. To state that this could happen again or that some other form of paper mistake could take place is self evident.

WHEREFORE, since an automatic parole revocation procedure, without even the rudimentary due process protections, can result in "mistakes", I respectfully request this Court to Deny the Petition for the Writ of Certiorari.

Respectfully submitted,

Daniel Summers 61356

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Prepared by:

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